not by weight. See Allen *v.* U. S., 194 Fed. 664, 667, 114 C. C. A. 357, 39 L. R. A. (N. S.) 385. * * * In this case we are not primarily concerned with the question whether the direct testimony of one witness, without more, will sustain a conviction; for in this case there was no direct testimony of the falsity of the oath. The evidence was circumstantial. But if direct testimony of one witness is required, then, of course, circumstantial evidence does not suffice, and there are decisions which explicitly hold that circumstantial evidence alone of the falsity of the oath is not sufficient. Allen *v.* United States, 39 L. R. A. (N. S.) 385, 114 C. C. A. 357, 194 Fed. 664; State *v.* Courtright, 66 Ohio St. 35, 63 N. E. 590, 15 Am. Crim. Rep. 584, 30 Cyc. 1452; and text books above cited.

"The question is a new one in this state, and we are at liberty to choose the rule which appeals to us as being most consonant with reason. Notwithstanding the high authority above cited, we are of the opinion that the rule laid down is out of harmony with our system of jurisprudence. In our opinion it is one of the rules of the common law inapplicable to our situation and inconsistent with our circumstances,' and hence not to be followed. See State *v.* Pulle, 12 Minn. 164, Gil. 99. We find ourselves unable to approve the doctrine that perjury is a more heinous crime than murder, or that one charged with perjury should have greater immunity than one charged with murder. Suppose, for example, the only eyewitness to a murder should testify that the accused is not the man who committed the crime, and yet the circumstantial evidence of guilt is so strong that the jury convicts of first degree murder. With what consistency can it be said that a quality of testimony which will justify a court in condemning a defendant to life imprisonment, or, in some jurisdictions, to be hanged, is insufficient to sustain a conviction of the falsifier of the crime of perjury, for which he may suffer a penalty of a short term of imprisonment? The lightness with which, we are pained to say, the oath of a witness is too often treated, does not warrant us in making conviction of the crime of perjury most difficult of all crimes of which state courts have jurisdiction. We hold that perjury may be proved by circumstantial evidence, if proof is made beyond reasonable doubt, as in the case of other crimes. Nor is this doctrine without authority to sustain it. Ex parte Metcalf, 8 Okla. Crim. Rep. 605, 44 L. R. A. (N. S.) 513, 129 Pac. 675. See People *v.* Doody, 172 N. Y. 165, 64 N. E. 807, 15 Am. Crim. Rep. 576, holding that the old rule has no application where the proof of the crime is necessarily based on circumstantial evidence."

Telegraphs and Telephones—In Transmission of Money Telegraph Company Acts as Common Carrier.—In Western Union Telegraph Co. *v.* Lapenna, 133 N. E. 144, the Appellate Court of Indiana held that a telegraph company, in transferring money by wire, was acting

as a common carrier, and bound to use ordinary care; and if, through want of such care, it paid the money to an impostor, it was liable.

The court said in part: "No authorities are necessary to support the proposition that appellant in the transfer of the money in question was acting as a common carrier. A telegraph company in handling transactions such as the one under consideration, is bound to use ordinary care; and if, through want of such care, appellant paid the money to an impostor, it is liable. Marab *v.* Western Union, etc., Co., 167 Mich. 192, 132 N. W. 568. The facts in the case just cited are very similar to the facts in the case now under consideration. Marab was a Syrian living in Detroit. He was acquainted with one Mrs. Saida Abda, a Syrian woman, also residing in Detroit. The latter, having received a telegram that her daughter was being held on Ellis Island, went to New York, and, arriving late at night, went to a hotel kept by a Syrian. There she made the acquaintance of another Syrian, to whom she showed the telegram after which she let him take it. He kept the telegram, and went to a telegraph office and telegraphed Marab, requesting $100, and signed the telegram, "Saida Abda." Not being able to read or speak English, Marab took the telegram to the telegraph office and showed it to the agent of the company, and as here, the agent filled out the transfer order, signed Marab's name both to the transfer order and to the waiver of identification, the latter being identical in form with the waiver in the instant case. The agent at Detroit telegraphed the money to New York, and it was paid to the man who sent the telegram, he being first required to bring a letter from the hotel keeper and from the operator who transmitted his message to Marab. The New York agent, before paying the money to the impostor, gave him a receipt to sign which was signed by impostor 'Sada Abda.' The impostor remarked that there were two ways of writing the name, after which the agent had him sign 'Saida Abda' under the first signature. The money was then paid to the impostor. There was judgment against the telegraph company, from which it appealed. The court, in affirming the judgment, said:

" 'We think the record discloses facts justifying the jury in finding negligence.'

"In Bank *v.* Western Union, etc., Co., 141 Fed. 522, 72 C. C. A. 580, 4 L. R. A. (N. S.) 181, 5 Ann. Cas. 515, the court, in discussing the duty of a telegraph company to investigate the identity and authority of those presenting telegrams to them for transmission, after holding that a company might take it for granted that those presenting telegrams had the right to send them, said:

" 'But notice of facts and circumstances which would put a person of ordinary caution upon inquiry is notice of all the facts to which a reasonably diligent inquiry would lead. And, whenever facts or circumstances come to the notice of a telegraph company,

or of its operators, which would arouse the suspicion of a person of ordinary prudence and intelligence in a like situation, and would suggest to his mind that the party who presents the message is not authorized to send it, the exercise of reasonable care requires them either to investigate and ascertain his authority before transmitting it, or to communicate the facts and circumstances and the suspicion to the addressee at or before the delivery of the message.'

"In the case just cited, the court referred to Western Union, etc., Co. *v.* Meyer, 61 Ala. 158, 32 Am. Rep. 1, where an impostor who was unknown to the telegraph operator presented for transmission a message to Meyer signed "Max Reis," wherein Meyer was requested to send him money by telegraph, and Meyer, having a nephew named Max Reis, complied with the request, and the telegraph company paid the money to the impostor sending the message. It was held that there was nothing to create suspicion in the mind of the company's agent that the party to whom it paid the money was not the person to whom Meyer intended it should be paid, and for that reason the telegraph company was not liable on account of having paid it to an impostor. The court, in Bank *v.* Western Union, supra, in discussing Western Union *v.* Meyer, supra, on page 532 of 141 Fed., on page 590 of 72 C. C. A. (4 L. R. A. [N. S.] 181, 5 Ann. Cas. 515), said:

" 'No decision of any court has been cited or discovered which is inconsistent with the rule that, in the absence of notice of facts or circumstances which would awaken inquiry and arouse suspicion in the mind of a person or ordinary * * * intelligence in a like situation, regarding the authority of the party who presents a message for transmission to send it, the exercise by a telegraph company and its operators of reasonable care to receive and transmit genuine and authorized messages only does not require them to investigate or ascertain the identity or authority to send it of the person who tenders a message for transmission. * * * Tried by this rule, there is no evidence in this case of any negligence of the defendant.' * * *

"The waiver of identification in the instant case does not purport to be a complete waiver of identification, or to authorize appellant to pay the money to any one without some identification. The language of the waiver of identification is. 'I desire that the above-named payee shall not be required to produce positive evidence of personal identity,' and authorized appellant to pay the money to 'such person as its agent believes' to be the payee named.

"It is to be observed that the application or order which appellee signed at Portsmouth, Ohio, requested appellant to transfer the money indicated, and called the attention of appellant to the fact that the money was to be paid to 'Alfred Macch,' 151 South Detroit street, Indianapolis. The message received at the Indianapolis office from the Portsmouth Office also directed the Indianapolis office to pay

the money to Alfred Macch, 151 South Detroit street. Appellant, with this information before it, sent a notice to the party living at 151 South Detroit street, but, as heretofore stated, paid the money to one not living at 151 South Detroit street, but to one who, when asked where he was staying, gave an altogether different address. There is no evidence that the impostor made any claim that he resided at 151 South Detroit street. There is evidence that the identification card and letters produced by the impostor bore an address, but there is no claim or contention in this case that the address was 151 South Detroit street, or that his name was Alfred Macch. Indeed, he gave a different name and a different address.

"Appellant contends that in accepting the money it undertook to deliver it 'to such person as its agent believes to be the abovenamed payee'; that its undertaking was not to pay the person its agent reasonably believed, or should, in the exercise of diligence, have believed, to be the person named, and that it is absolved when payment is made to one whom its agent in fact believed was the payee. The waiver of identification under consideration did not relieve appellant from the exercise of reasonable care in identifying the person to whom the money should have been paid, or in arriving at a belief as to the identity of such person. Appellant, notwithstanding the waiver of identification, was required to exercise reasonable care in that behalf, and if it failed to do so, and as a result of such failure it paid the money to an impostor, it is liable to appellee for any loss occasioned by reason of such neglect."

Wills—Will Made as Part of Initiation into Secret Society.—In the case of In re Watkins' Estate, 198 Pac. 721, the Supreme Court of Washington held that a will made as part of ritualistic work at a time when testator was taking a degree in a secret order is not necessarily invalid.

The court said in part: "It developed in the testimony that the instrument was executed on November 16, 1903, some thirteen years prior to the death of Mr. Watkins, at a time when there was being conferred on him a degree of the secret order mentioned. It was testified by members of the order that the making of a will was a part of the ceremony of the particular degree, required of all candidates who had not theretofore made a will. The members of the order testifying did not, however, altogether agree as to the purpose of the requirement. One testified that it was ceremonial only, a part of the ritualistic work, and not intended as a testamentary disposition of property. Two others testified to a contrary view; the substance of their testimony being that all members of the order who had taken this degree were expected to die testate, and that, while the will executed on the particular occasion, like all other wills, was subject to modification by subsequent codicils or revocation by subsequently executed wills, it is intended and regarded as testamentary.